Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

To: The Federal-State Joint Board on Universal Service

REPLY COMMENTS OF THE SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION

The South Dakota Telecommunications Association[1] (SDTA) hereby submits reply comments in the above-referenced docket regarding the Commission's rules relating to high-cost universal service support and the eligible telecommunications carrier (ETC) designation process.[2] SDTA supports the comments of the National Telecommunications Cooperative Association (NTCA) as discussed below.

Support to Rural Carriers Should be Provided based on the Actual Cost of Total Facilities

SDTA agrees with the comments of NTCA that high cost universal service support for incumbent local exchange carrier (ILEC) rural telephone companies should be provided based on the actual cost of the carrier's total facilities. Currently, high cost support for rural carriers is determined based on an embedded cost mechanism in recognition of the great diversity among rural carriers and their sensitivity to changes in support amounts. As demonstrated by NTCA,

[1] SDTA is an association of 30 independent, cooperative and municipal incumbent local exchange carriers (LECs) serving rural areas in South Dakota.
[2] See, *Public Notice* (Federal-State Joint Board on Universal Service), CC Docket No. 96-45, FCC 03J-1, released February 7, 2003 by the Federal-State Joint Board on Universal Service (Joint Board) and the Commission's Referral Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 02-307 (rel. November 8, 2002) (Referral Order)

the over 1,000 rural telephone companies serving rural America are widely different from each other in terms of the communities and markets that they serve and the average population density of their service areas. In the *First Report and Order*, the Commission found that "rural carriers generally serve fewer subscribers, serve more sparsely populated areas, and generally do not benefit as much from economies of scale and scope."[3] The Commission also found that for many rural carriers, universal service support provides a large share of the carriers' revenues, and thus, any sudden change in the support mechanisms may disproportionately affect rural carriers' operations. The Commission concluded that because of the diverse circumstances of rural carriers, the available forward-looking mechanisms could not accurately predict the costs of serving rural areas.

In the further proceeding, the Rural Task Force (RTF) recommended, and the Joint Board agreed, that a hypothetical forward-looking economic cost proxy model is not appropriate to determine universal service support for the highly diverse rural carriers. The RTF also demonstrated that a support model based upon forward looking economic costs fails to account for much of the cost already incurred in the build-out of a rural network.[4]

In the *Fourteenth Report and Order,* the Commission found that it was still not able to move to a forward-looking mechanism for rural carriers.[5] Rather, the Commission adopted a modified version of the RTF's recommended embedded cost model for determining high-cost

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[3] *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8936 (1997) (*First Report and Order*) (subsequent history omitted).
[4] NTCA Comments at 5-6.
[5] *Federal-State Joint Board on Universal Service and Multi-Association Group (MAG) Plan for Regulation of Interstate Services on Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11233, at 11256, para. 25 (2001), as

support for rural carriers.

There is no basis to conclude that the circumstances of rural carriers have changed to warrant a shift away from these findings and an embedded cost approach for high-cost support for rural carriers. Accordingly, SDTA supports NTCA's position that support for rural carriers should be determined based on their embedded costs.

All Lines Must be Supported

In the *Public Notice*, the Joint Board asks whether second lines should be eligible for universal service support. SDTA urges the Joint Board to adopt NTCA's position and recommend that support for all lines should be continued.

All lines must be included in determining the ILEC's embedded costs because the total ILEC network is necessary to provide services in rural areas comparable to the services provided in urban areas. Accordingly, universal service support must be for the total network, which means total lines. A reduction in high-cost support due to limiting support to primary lines would adversely affect the ability of rural carriers to deliver universal service to all consumers at affordable prices.[6]

Further, rural ILECs made substantial investments to provide service to all consumers under the existing universal service support mechanism that allows for the recovery of a carrier's embedded network costs.[7] If these costs are no longer recovered, then they could become stranded investment. This would jeopardize the ability of rural carriers to service debt for existing plant facilities and would negatively impact future investment to modernize their

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corrected by Errata, CC Docket No. 96-45, 00-256 (Acc. Pol. Div. Rel. June 1, 2001) *Fourteenth Report and Order*, *recon. pending.*

[6] NTCA Comments at 7.

[7] *Id.*

telecommunications infrastructure.[8]

In addition, loss of support for additional lines in rural areas would significantly increase the rates to end users for such lines, which could lead to a reduction in the number of lines. This would impact the overall extent and quality of the network because the loss of a line does not translate into a corresponding reduction in the cost of building and maintaining the ILEC network. It also would increase significantly the cost to local businesses, schools, government, health care providers, and other end-user customers with multiple lines, which could have a significant adverse impact on the community, which in turn would impact the ILEC and its network.

The "Identical Support" Rule Does not Comply with the Universal Service Principles

In addition to the universal service principles enumerated in Section 254(b) of the Act, the Commission adopted the principle that federal support mechanisms should be competitively neutral. The Commission defined competitive neutrality as neither unfairly advantaging nor disadvantaging particular service providers or technologies.[9]

The Commission's "identical support" rule, whereby competitive ETCs (CETCs) receive the same support per line as the ILEC, is not competitively neutral. Rather, the rule bestows an advantage on CETCs by providing support for costs that the CETCs do not incur. For example, wireless CETCs are exempt from rate and state entry regulation, which allows them to avoid a number of costs associated with carrier-of-last-resort obligations and federal and state filing requirements.[10] Their facilities are less sensitive to distance and, therefore, the cost to serve low

[8] *Id.* at 7-8.
[9] *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801-03 (1997) (*First Report and Order*) (subsequent history omitted).
[10] NTCA Comments at 13-14.

density areas is less. In addition, wireless CETCs avoid certain costs incurred by ILECs because they are not required to meet the same service quality standards; they do not provide ubiquitous local service; and they do not offer equal access to long distance carriers.[11]

The "identical support" rule also results in excessive support, contrary to the requirements of the Act. Section 254(b) of the Act directs the Commission to base policies for the preservation and advancement of universal service on several principles, including that support should be specific, predictable, and <u>sufficient</u>.[12] The court has indicated that "sufficient" support means not only that support must be <u>enough</u> to meet the goals of the Act but that "<u>excessive</u> funding may itself violate the sufficiency requirements of the Act." (emphasis added).[13] Thus, providing too much support for CETCs based on the costs of another carrier fails the "sufficiency" standard.

The Commission relies on the Act's requirement that support only be used for supported services to ensure that CETCs do not receive excessive support. An unenforced requirement, however, clearly cannot provide such assurance. In truth there is no way to ensure that CETCs receive and use support only for supported services because there is no mechanism in place to review the use of support by CETCs and there is no standard for conducting any such review. Rather, under the "identical support" rule, high cost support provided to wireless CETCs, in many instances, is a "pure windfall".[14] For example, *The Wall Street Journal Online* recently reported that according to a JP Morgan analyst, the approximately $40 million in universal service support that Western Wireless Corporation (Western Wireless) will receive "should be

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[11] *Id.* at 14.
[12] 47 U.S.C. §254(b)(5).
[13] *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 619 (5th Cir. 2000).

100% accretive to Western Wireless margins as there are no costs associated with USF."[15] Accordingly, the "identical support" rule should be eliminated.

High Cost Support Based on Auctions is Contrary to the Act

SDTA supports NTCA's comments against the use of auctions to award support. Section 254(b) requires the Joint Board and Commission to base universal service on a number of principles including that "quality services should be available at just, reasonable, and affordable rates"[16] and that consumers in rural areas receive services comparable to those received by urban consumers and at comparable rates. As demonstrated by NTCA, an auction, which would limit support to the lowest bidder, is inconsistent with these goals because it would limit the ability of companies to invest in networks and to provide an evolving level of quality service.[17]

The Public Interest Requires a Finding Concerning the Cost of Supporting More than one Carrier

The Joint Board asks what factors should be considered in determining whether designation of more than one ETC is consistent with the public interest, convenience and necessity. SDTA agrees with NTCA that the Commission and the states have misapplied the public interest determination for rural areas by treating competition as a "preeminent goal to be promoted at the expense of all others…",[18] without considering that "subsidized competition and competition for competition's sake are not the goals of the 1996 Act and may ultimately harm

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[14] NTCA Comments at 16, citing Salomon Smith Barney, Wireless Services, USF Subsidies May Significantly Improve Subscriber Economics for Rural Carriers, Multi-Company Note, p.1 (January 21, 2003).

[15] Tiffany Kary, *Western Wireless Up; Regulatory Trend Favors Co.-JPMorgan,* The Wall Street Journal Online, May 14, 2003 (copy attached).

[16] 47 U.S.C. §254(b)(1).

[17] NTCA Comments at 17.

[18] *Id.* at 20.

the consumer."[19] On the contrary, if competition was synonymous with the public interest requirement in Section 214(e)(6), Congress could have simply required the certification of additional ETCs in rural areas, as it did in non-rural areas.

Thus, SDTA maintains that for rural areas, the public interest determination should include a cost/benefit analysis of supporting multiple carriers in high cost, low demand areas. This should include an analysis of whether quality services at affordable rates can continue to be provided by all ETCs if an additional ETC is designated, without relying on an increasing level of universal service support. As stated by NTCA, "[t]he Commission should examine whether additional ETCs in an area will ultimately have an adverse effect on affordability contrary to universal service principles and quality service."[20]

The Commission and the states also should examine whether support will be used to provide supported services in rural areas before designating an additional carrier as an ETC. Section 254(e) requires carriers receiving support to "use the support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[21] However, there is no mechanism in place to ensure that this is the case. Therefore, SDTA agrees with NTCA that before granting CETC status, the Commission and states should determine whether the supported service actually will be provided to customers' in rural high cost areas.

Finally, the Commission and the states should grant ETC status to competitors in rural areas only if they offer service throughout the ILEC's study area. Section 214(e)(5) dictates that for an area served by a rural telephone company the "service area" for ETC designation purposes is the ILEC's study area. A different service area is allowed only if the Commission and the

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[19] *Id.* at 21.
[20] NTCA Comments at 22.
[21] 47 U.S.C §254(e).

states agree on a different definition. The Commission's recent ETC decisions, however, ignore this requirement and allow competitors to serve areas less than the ILEC's study area for a number of reasons. As demonstrated by NTCA, this allows "cream skimming" because the ETC can serve only the lowest cost portion of a rural study area.[22] Consequently, the remaining subscribers would be adversely affected, as the ILEC would have to raise rates to compensate for lost revenue or it would have to reduce services or quality.

Conclusion

Based on the foregoing, SDTA requests that the Joint Board adopt the recommendations contained herein.

Respectfully submitted,

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[22] NTCA Comments at 26.

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Western Wireless Up; Regulatory Trend Favors Co.-JPMorgan

DOW JONES NEWSWIRES

By Tiffany Kary

Of DOW JONES NEWSWIRES

NEW YORK -- Western Wireless Corp. (WWCA) leapt as high as 21% Wednesday as JP Morgan touted the rural wireless company's earnings and valuation and said it could benefit from current regulatory trends.

The company offers cellphone service primarily in rural areas in 19 western states. In its recent first-quarter report, losses were 27 cents a share, missing Thomson First Call's consensus estimate by two cents. But the quarter was well-received by analysts who noted that new-customer additions and average revenue per user (ARPU) - a key metric for wireless service providers - came in stronger than expected.

JP Morgan analyst Thomas Lee pointed out Wednesday that while the company's business is losing money overall because of its international business - which operates eight businesses globally - its domestic business has been profitable for five consecutive quarters and stands to benefit from some regulatory changes. He added the stock, which he rates overweight, to JP Morgan's focus list.

Without losses from international business, Lee said domestic earnings were 24 cents a share in the first quarter, or 18 cents a share after including a charge for asset impairment. He also predicts domestic earnings will be $1.39 in fiscal 2003, almost three times what the domestic operations earned in 2002. Thomson First Call's consensus estimate for the overall company is a loss of 61 cents a share.

"Domestic earnings power is impressive," Lee said.

Jefferies & Co. analyst Ben Abramovitz also said he separates out Western Wireless' international business in his evaluation of the firm. Most of the company's international businesses is financed by loans, he noted, and the domestic division of the company isn't responsible for any losses. He compared the situation to that of Nextel Communications Inc. (NXTL). When its international business filed for bankruptcy, Nextel's domestic operations were immune from creditors.

Abramovitz doesn't own shares, and Jefferies doesn't have an investment-banking relationship with Western Wireless. He has a hold rating on the shares.

Lee also noted that valuation is attractive, as shares trade at around 5.4 times 2003 earnings estimates, as opposed to the 12-to-15 times estimates that most local-exchange carriers operate at.

Lee doesn't own shares in Western Wireless, but JP Morgan expects to receive or intends to seek investment-banking compensation from the company within the next three months.

Shares traded recently at $8.78, up $1.29, or 17%, on volume of 2.7 million shares. Average daily volume is 510,159 shares.

Western Wireless could benefit from regulatory trends on two fronts, said JP Morgan's Lee.

Wireless-number portability, the provision that will allow customers to keep the same cell phone number but change carriers, is expected to be a negative for some carriers. But it won't affect rural carriers, said Lee, since the provision only applies to the top 100 urban markets in the US.

Lee also said that the company is well-positioned to benefit from the Universal Service Fund, or USF, a fund designated by the Federal Communications Commission to help compensate companies for providing access in high-cost areas. The funds have traditionally only been available to operators of wireline phone service.

"USF funds have opened up for wireless operators. Western Wireless is well positioned to benefit from these trends," said Lee.

He noted that the company is set to receive around $40 million in USF money for 2003, "which should be 100% accretive to Western Wireless margins as there are no costs associated with USF."

-By Tiffany Kary, Dow Jones Newswires; 201-938-5285

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CERTIFICATE OF SERVICE

I, Douglas W. Everette, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that copies of the foregoing Reply Comments were served by first class U.S. mail or hand delivery* on this 3rd day of June, 2003 to the persons listed below:

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